

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

OPTUM, INC. and  
OPTUM SERVICES, INC.,

*Plaintiffs,*

v.

DAVID WILLIAM SMITH,

*Defendant.*

Civil Action No.: 19-cv-10101

**PLAINTIFFS' MOTION FOR AN INJUNCTION PENDING APPEAL AND/OR  
AN INDICATIVE RULING ON THE PENDING MOTION FOR A  
TEMPORARY RESTRAINING ORDER**

Pursuant to Federal Rules of Civil Procedure 62 and 62.1, Plaintiffs Optum, Inc. and Optum Services, Inc. (together, "Optum") respectfully move this Court to enter an injunction pending appeal and/or to enter an indicative ruling on Optum's request for a temporary restraining order (TRO).

Principally, Optum respectfully moves this Court for an injunction pending appeal pursuant to Federal Rule of Civil Procedure 62(d), enjoining Defendant David William Smith from engaging in certain activities, as set forth in the proposed Order attached hereto as Exhibit 1.

In addition (or in the alternative), Optum respectfully moves this Court for an indicative ruling pursuant to Federal Rule of Civil Procedure 62.1(a). *See also* Fed. R. App. P. 12.1(a). Such a ruling would state either that the Court would grant a TRO if it had jurisdiction to do so or that Optum's motion requesting a TRO raises substantial issues.

In support hereof, Optum relies on the Memorandum of Law in Support of Optum's Motion for an Injunction Pending Appeal and/or an Indicative Ruling on the Pending Motion for a Temporary Restraining Order filed herewith.

WHEREFORE, Optum respectfully requests that the Court enter an injunction pending appeal pursuant to Federal Rule of Civil Procedure 62(d), enjoining Defendant David William Smith from engaging in certain activities, consistent with the proposed Order attached hereto as Exhibit 1.

Respectfully submitted,

OPTUM, INC. and  
OPTUM SERVICES, INC.,

By their attorneys,

/s/ Russell Beck

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Dated: February 6, 2019

#### **CERTIFICATE OF SERVICE**

I hereby certify that this document has been filed through the CM/ECF system on February 6, 2019, and will be served electronically to the registered participants as identified on the Notice of Electronic Filing through the Court's transmission facilities, and that non-registered participants have been served this day by mail.

/s/ Russell Beck

**LOCAL RULE 7.1(a)(2) CERTIFICATE**

I certify, pursuant to Local Rule 7.1(a)(2), that counsel for Plaintiffs have conferred with counsel for Defendant regarding Plaintiffs' Motion for an Injunction Pending Appeal and/or an Indicative Ruling on the Pending Motion for a Temporary Restraining Order and have attempted in good faith to resolve or narrow the issues. Plaintiffs understand that Defendant intends to oppose this motion.

/s/ Stephen D. Riden

Stephen D. Riden